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March 30, 2005

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Marcia G. Lundeen

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT:	John English	§	
		§	GROUP ART UNIT: 3714
SERIAL NO.:	09/682,606	§	
		§	CLASS: 472/93
FILED:	September 26, 2001	§	
		§	EXAMINER: Kien T. Nguyen
FOR:	Pugilist Corner Mat	§	
	System	§	

APPEAL BRIEF

Atty. Docket No.: ENG-01  
Date: March 30, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir or Madam:

Appellant files this Appeal Brief pursuant to 37 C.F.R. §1.192. Please charge deposit account 501285/DNL/ENG-01 in the amount of \$250.00 for the fee for filing the Appeal Brief and any other fees that may be associated with this communication. The Notice of Appeal was filed concurrently with this Appeal Brief, on or about March 30, 2005.

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### **1. REAL PARTY IN INTEREST**

This application has not been assigned and is not subject to assignment. Appellant, John English, having a residence of 5140 Baker Road, Needville, Texas, 77461, is the real party in interest.

### **2. RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any other appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

### **3. STATUS OF THE CLAIMS**

Claims 1 – 3, 5 – 14, and 16 – 24 are pending in the application; claims 4 and 15 were cancelled. Claims 7 and 18 – 24 were not indicated as being allowable over the prior art in the Office Action appealed from, but were indicated on the cover sheet as being objected to, presumably as depending from a rejected base claim even though claim 19 is an independent claim and claims 20 – 24 depend therefrom. Appellant appeals the rejection of claims 1 – 3, 5 – 6, 8 – 14, and 16 – 17 under 35 U.S.C. 103(a) as being unpatentable over *Jackson* '463 in view of appellant's admitted prior art, and further in view of *Sweeney et al.* '947, and further in view of "Wrestling Mats," as found in the "Wrestler's World suplay.com" catalog, as stated in the Office Action of January 11, 2005. Appellant

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provisionally appeals any rejection of claims 7 and 18 – 24; the appeal is provisional because it is not clear if these claims have been rejected or not.

#### **4. STATUS OF AMENDMENTS**

No amendments have been filed in this application since the Office Action of January 11, 2005. All previously filed amendments have been entered.

#### **5. SUMMARY OF THE INVENTION**

This invention relates to a boxing ring configuration, boxing method, and a pugilist corner mat, and more particularly to the same wherein an absorbent corner mat is used under the seat of a pugilist to collect fluids that would otherwise deposit on the boxing ring floor while the pugilist is being tended to during a rest period between rounds of the contest.

The present invention involves an absorbent, lay-flat corner mat 112 that can be positioned under the seat 114 of the pugilist while he is being administered to between rounds. Mat 112 catches any fluids that would otherwise be deposited, and thus keeps the floor 102 from becoming slippery or stained. The mat 112 has a printable area 131 on the mat 112 for recording pugilist data. The mat 112 can also display a trademark 130 on an obverse surface, preferably in the apron area 126. The corner mat 112 is put in place at the end of a round, and removed at the start of the next round so as not to get in the way of the pugilists. A new corner mat 112 can be used for each round, or the corner mat 112 can be re-used.

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## 6. ISSUES

The sole issue in this case is whether or not the apparatus and method of claims 1 – 3, 5 – 6, 8 – 14, and 16 – 17 would have been obvious to one of ordinary skill in the art under 35 U.S.C. §103 over *Jackson* '463 in view of appellant's admitted prior art (AAPA), and further in view of *Sweeney et al.* '947, and further in view of "Wrestling Mats." Appellant respectfully submits that the references do not support a *prima facie* case of obviousness and/or that the claims are otherwise non-obvious.

## 7. GROUPING OF THE CLAIMS

The claims can be grouped as follows:

Group 1: Claims 8, 11, 16, and 17, directed toward a method of using the pugilist corner mat. Claim 8 is representative of the appealed claims of Group 1.

Group 2: Claim 9, directed toward a method of using a pugilist corner mat further comprising indicia.

Group 3: Claim 10, directed toward a method of using a pugilist corner mat further comprising indicia located on the apron area of the mat.

Group 4: Claims 1, 5, and 6, directed toward a boxing ring and a pugilist corner mat. Claim 1 is representative of the appealed claims of Group 4.

Group 5: Claim 2, directed toward a pugilist corner mat further comprising indicia.

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Group 6: Claim 3, directed toward a pugilist corner mat further comprising indicia located on the apron area of the mat.

Group 7: Claim 12, directed toward a method of using the pugilist corner mat, where different pugilist corner mats are used in successive rounds.

Group 8: Claims 13 and 14, also directed toward a method of using the pugilist corner mat, where the method further comprises the step of recording pugilist data on the mat. Claim 13 is representative of the appealed claims of Group 8.

Group 9: Claims 19 – 24, directed to a pugilist corner mat with outer absorbent layers and an inner impervious layer. Independent claim 19 is representative of the provisionally appealed claims of Group 9. The appeal of these claims is provisional because the examiner has not indicated in the Office Action that these claims are allowable, and the objection noted on the cover sheet does not appear to be applicable inasmuch as claim 19 is independent and claims 20 – 24 depend therefrom.

Group 10: Claims 7 and 18, directed to a pugilist corner mat with outer absorbent layers and an inner impervious layer. Claim 7 is representative of the provisionally appealed claims of Group 10. The appeal of these claims is provisional because the examiner has not indicated in the Office Action whether these claims are allowable or not.

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## 8. ARGUMENT

### 8.1 Introduction

To reject claims for obviousness, the prior art must (1) create a *prima facie* case of obviousness (2) which is unrebutted by Appellant. In re Dillon, 16 USPQ 2d 1897, 1901 (Fed. Cir. 1990). To establish a *prima facie* case of obviousness, three basic criteria must be met: 1) there must be some suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; 2) there must be a reasonable expectation of success; and, 3) the teaching or suggestion and the reasonable expectation of success must both be found in the prior art, not based on appellant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP § 2142-2143.03. Appellant respectfully submits that the prior art references relied on by the examiner fail to establish a *prima facie* case of obviousness with respect to the claims of Groups 1 to 10.

### 8.2 Overview of Cited Prior Art

#### 8.2.1 Jackson, U.S. Pat. No. 6,682,463

The primary reference relied upon by the examiner, *Jackson* '463, discloses a water-resistant mat used to collect and dispose of all fluids distributed in a competitor's corner. The mat 9 is water-resistant, has a sloped surface 10 from elevated outer edges 11 to the gravity feed extraction port 12. The mat 9 also has

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hinges 17 that allow it to fold, and depressions 18 to support a standard ring event stool. The mat 9, with sloped surface 10, through aid of gravity and wet vacuum source 20, extracts all fluids dispensed in the corners. See *Jackson* at column 1, lines 50 – 51, and column 2, lines 19 – 55.

#### 8.2.2 Appellant's Admitted Prior Art

Each of the rejections for obviousness are, in part, based upon appellant's admitted prior art (AAPA). Specifically, the admitted prior art used in the rejections is from the first paragraph of the "Background" portion of the specification and reads as follows:

*Boxing matches conducted in a boxing ring are typically conducted in a number of timed rounds. Between each round, the pugilists are retired to their respective corners for a timed rest period. During the rest period, each pugilist is seated on a chair or stool and administered to by the trainer, medical technician, physician, their assistants and/or other support personnel. Water or other rehydration fluids may be spilled onto the floor adjacent the pugilist, together with ice, sweat, blood, or the like. Frequently, there is so much fluid deposited in a pugilist corner during a rest period that the floor may become slippery and/or the contest must be delayed or interrupted to*

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*mop up excessive fluids. Furthermore, the fluids may stain or discolor the floor.*

### 8.2.3 Sweeney et al., U.S. Pat. No. 6,652,947

The examiner further relied upon *Sweeney et al.* '947, which discloses a disposable, slip-resistant, leak-proof mat 10 for use with infant high chairs 12. The sheet comprises a top absorbent layer 32, a middle absorbent layer 30, and a bottom slip-resistant, waterproof layer 28. The mat further includes perforations 18, center flap 20, and openings 22 to install the mat 10 around the legs 14 of the infant high chair 12. See *Sweeney* at column 2, lines 24 – 40, and column 3, lines 37 – 49. The examiner asserts that it would have been obvious to utilize the three-ply mat in *Sweeney* with the boxing ring mat as taught by *Jackson* in view of appellant's admitted prior art. See Office Action dated January 11, 2005, page 2, last paragraph (last paragraph above "Response to Arguments").

### 8.2.3(a) Sweeney is Non-Analogous Art

Appellant objects to the use of *Sweeney* in combination with *Jackson*, as *Sweeney* is not analogous art. Appellant contends that *Sweeney* would not have logically commended itself to an inventor's attention in considering his problem. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 – 61 (Fed. Cir. 1992). Appellant's invention as well as that of *Jackson* each deal with boxing, fight rings,

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and related equipment. It is not logical for someone in the art of boxing to consider an invention related to an infant high chair.

Although appellant believes that *Sweeney* is non-analogous art, appellant nonetheless discusses arguendo the relevance of *Sweeney* throughout the arguments presented below without conceding that *Sweeney* is not non-analogous.

#### 8.2.4 "Wrestling Mats"

In rejecting the claims, the examiner further relied upon a website catalog advertisement for wrestling mats in "Wrestler's World" at suplay.com. The catalog is for the years 2002 – 2003. The mat is used as a surface on which competition takes place, and uses a PVC foam core as a shock absorbing layer. The advertisement merely states that a feature of the mat is a "customized school insignia," from which the examiner asserts that it is known to utilize wrestling mats having customizable indicia placed on the wrestling mat. Thus, the examiner contends that the combination of appellants admitted prior art, *Jackson*, and the catalog reference teach that it is known to utilize wrestling mats having customizable indicia.

#### 8.2.4(a) "Wrestling Mats" is not Prior Art

Appellant objects to the use of "Wrestling Mats" as a prior art reference. "Before answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. 102." Panduit Corp. v. Dennison

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Mfg. Co., 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). MPEP 2141.01. Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted or, if no publication date is given, the retrieval date. MPEP 2128. The examiner's retrieval date, December 20, 2004, is clearly after appellant's filing date. Appellant was unable to search the website catalog cited by the examiner, as the target pictures were inaccessible at the time of writing this brief. No publication date for the catalog was provided by the examiner. Thus, the earliest publication date that can be inferred based on the catalog, as the title indicates the catalog is for 2002 – 2003 (see attached printout), is January 2002, which is also clearly after appellant's filing date, September 26, 2001. Thus, the internet publication should not be used as a prior art reference.

Although appellant believes that "Wrestling Mats" is invalid for use as prior art, appellant nonetheless discusses *arguendo* the relevance of "Wrestling Mats" and its indication of customized insignia on a competition surface throughout the arguments presented below without conceding that "Wrestling Mats" is valid prior art.

### 8.3 Group 1 Was Non-Obvious in View of the Prior Art

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d

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981, 180 USPQ 580 (CCPA 1974). The combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, or “Wrestling Mats” fails to teach or suggest all claim limitations of Group 1 claims 8, 11, 16, and 17, and therefore appellant’s invention cannot properly be rejected for obviousness.

Claim 8 presents a method in which a pugilist mat can be used, and requires an absorbent mat. *Jackson* fails to teach the use of an absorbent mat. With respect to *Jackson* in view of AAPA, the Office Action states that *Jackson* discloses a mat at column 2, lines 20 – 22. The Office Action overlooked that *Jackson* discloses a water-resistant plastic mat, rather than the absorbent mat as claimed by appellant in claim 8. Specifically, at column 2, lines 20 – 22, *Jackson* teaches, “a mat 9 designed such that it represents 90° of a complete circle, manufactured from a water-resistant poly-plastic material.” Water resistant materials, of course, are not absorbent. Nowhere in either *Jackson* or in the AAPA is it taught or suggested that the corner mat be manufactured from absorbent materials. Thus, the combination of AAPA and *Jackson* fails to teach all the claim limitations of claim 8 of the present application.

Furthermore, *Jackson* teaches the extraction of fluids using a mat, “through aid of gravity and wet vacuum source.” See *Jackson*, col. 2, lines 49-50. *Jackson* also teaches the collection of “all fluids dispensed in the corners through the aperture openings 13, of the fluid extraction port 12, through the extraction port

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connector 16, through the flexible hose 19, to be collected by the wet vacuum source 20, thus eliminating hazardous wet corner conditions.” See *Jackson* at col. 2, lines 50 – 55. Appellant’s invention, on the other hand, is not directed to the extraction or collection of fluids, but rather is directed to the absorption of all fluids dispensed during a boxing event. Thus, *Jackson* does not suggest the fluid control system claimed by appellant, but rather teaches squarely away from it.

With respect to any purported obviousness in further view of non-analogous *Sweeney*, this reference fails to bridge the gap between the claimed invention and the purported combination of AAPA and *Jackson*. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). There is not found in *Jackson* or non-analogous *Sweeney* or AAPA a suggestion or indication of the desirability of the combination.

Additionally, the modification proposed by the examiner’s alleged combination of the water impervious mat of *Jackson* with the absorbent mat of *Sweeney* both (1) renders the *Jackson* invention unsatisfactory for its intended purpose and (2) changes the principle of operation of the *Jackson* mat from a central drainage and removal technique to an absorption-in-place approach. The modification proposed by the examiner would render the prior art unsatisfactory for its intended purpose, and thus there is no suggestion or motivation to make the

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proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Furthermore, the modification proposed by the examiner would change the principle of operation of the prior art invention being modified, and thus the teachings of the references are likewise not sufficient to render the claims *prima facie* obvious on this ground. In re Ratti, 270 F.2d 819, 123 USPQ 349 (CCPA 1959).

Appellant further contends that improper rational was used when combining *Jackson* and *Sweeney*. It is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983). The combination of a water-resistant apparatus with an absorbent mat is clearly improper. Additionally, *Jackson* teaches that the mat 9 supports a standard ring event stool and the weight of a competitor (*Jackson*, column 2, lines 31 – 33), whereas non-analogous *Sweeney* teaches the desire to position a mat under a high chair without moving the chair (*Sweeney*, column 3, lines 1 – 4). *Jackson* and *Sweeney* teach away from each other in a third manner with respect to their reuse: the mat in *Jackson* is designed for reuse in successive rounds (*Jackson*, column 2, lines 61 – 62), whereas the mat in *Sweeney* is disposable and there is no suggestion whatsoever of use with a boxing ring let alone re-use in successive rounds (*Sweeney*, column 3, lines 54 – 56).

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As previously stated, *Jackson* does not teach or suggest the use of an absorbent mat. *Jackson* teaches the collection and extraction of fluids through the use of gravity or vacuum and a non-absorbent plastic trough, specifically made of "a water-resistant poly-plastic material." (See *Jackson* at col. 2, lines 20 – 22). The combination of the teachings of *Jackson* with the absorbent mat having multiple layers disclosed in *Sweeney* is incompatible as the use of an absorbent material would prevent the collection and extraction of fluids as taught in *Jackson* as fluids would be absorbed rather than collected through an extraction port. Furthermore, the spill mat disclosed in *Sweeney* is non-analogous art, and therefore there is no motivation to combine with either of the *Jackson*, AAPA and/or Wrestler's World references. The rejection would thus impermissibly rely on hindsight using Appellant's invention as a road map to pick and choose elements found in the *Jackson* and *Sweeney* references while selectively rejecting contrary teachings in fashioning an obviousness rejection.

Because the combination of references would render the prior art inoperable, and because the rejection fails to show any suggestion or motivation, either in the references or in the knowledge generally available in the art, to modify the references or to combine reference teachings, the rejection is improper. It is respectfully submitted that there is no *prima facie* case of obviousness from the cited reference and the knowledge generally available to one of ordinary skill in the art, and that the

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claims are directed to a meritorious advance of the art, deserving of patentability. It is respectfully submitted that the rejection of claims 8, 11, 16, and 17 of Group 1 was improper and should be reversed.

#### 8.4 Group 2 Was Non-Obvious in View of the Prior Art

Claim 9 provides a method of using a pugilist corner mat further comprising indicia. The combination of *Jackson* and one or more of AAPA, *Sweeney*, or “Wrestling Mats” fails to teach or suggest all claim limitations of claim 9, and therefore this claim cannot be rejected for obviousness. As discussed above, the prior art references fail to disclose all elements of claim 8. Similar to claim 8, claim 9 requires an absorbent mat. Thus, the combination of *Jackson* and AAPA fails to disclose all elements of the method of claim 9, as neither reference discloses an absorbent mat. The addition of “Wrestling Mats” also does not encompass absorbent mats. *Sweeney*, as discussed above, is either non-analogous art, or cannot properly be combined with *Jackson* and AAPA in formulating an obviousness rejection. Claim 9 properly depends from claim 8 (Group 1), and thus a rejection based upon obviousness is improper.

Additionally, claim 9 further comprises the element of indicia. It would have been unobvious for one of ordinary skill in the art to combine the customizable indicia of “Wrestling Mats” with the water-resistant mat disclosed in *Jackson* as appellant’s absorbent mat is not the competition surface. Initially, it is

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noted that the record does not show that the examiner has established that “Wrestling Mats” is a proper prior art reference. Even if it were, the purported combination of *Jackson* and “Wrestling Mats” improbably combines a competition wrestling mat, having custom insignia installed during construction, with the water-resistant fluid collection system. The customized insignia disclosed is placed upon the competition surface, the wrestling mat. By analogy, the wrestling mat would be equivalent to the boxing ring floor of appellant’s invention and used during the claimed method. Thus, it is only logical that one of ordinary skill in the art would place indicia on appellant’s boxing ring floor. It would therefore have been unobvious for one of ordinary skill in the art to combine the customizable indicia of “Wrestling Mats” with the water-resistant mat disclosed in *Jackson* as appellant’s absorbent mat is not the competition surface.

It is respectfully submitted that there is no *prima facie* case of obviousness from the cited reference and the knowledge generally available to one of ordinary skill in the art, and that the claims are directed to a meritorious advance of the art, deserving of patentability. It is respectfully submitted that the rejection of claim 9 was improper and should be reversed.

#### 8.5 Group 3 is Non-Obvious in view of the prior art

Claim 10 provides a method of using a pugilist corner mat further comprising indicia located on the apron area of the mat. The combination of

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*Jackson* and one or more of AAPA, *Sweeney*, or "Wrestling Mats" fails to teach or suggest all claim limitations of claim 10, and therefore the claim cannot be rejected for obviousness. As discussed above, the prior art references fail to disclose all elements of Group 1 and Group 2. Claim 10 properly depends from claim 8 (Group 1) and claim 9 (Group 2), and thus a rejection based upon obviousness is improper. Additionally, claim 10 further comprises the element of indicia displayed on the apron area of the mat.

*Jackson* indicates a desire to imprint indicia on or about the surface of the invention. Non-antedating "Wrestling Mats" discloses that customized indicia, school insignias, can be added to the competition surface during manufacture. Merely disclosing that it is possible to place indicia on an object does not teach or suggest placing the indicia on the apron area of the mat as claimed by appellant in claim 3, depicted in Figure 2, and described in the specification at paragraph [0018]. As such, neither *Jackson* nor "Wrestling Mats" teaches or suggests the size or placement of the indicia on the apron area. Further, no indication of indicia located on the apron area can be found in either AAPA or non-analogous *Sweeney*.

It is respectfully submitted that there is no *prima facie* case of obviousness from the cited references and the knowledge generally available to one of ordinary skill in the art, and that the claims are directed to a meritorious advance of the art,

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deserving of patentability. It is respectfully submitted that the rejection of the claim of claim 10 was improper and should be reversed.

#### 8.6 Group 4 Was Non-Obvious in View of the Prior Art

Claims 1, 5, and 6 in Group 4 present a boxing ring having a removable absorbent mat having a printable area for recording pugilist data. The combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, or “Wrestling Mats” fails to teach or suggest all claim limitations of claims 1, 5, and 6, and therefore appellant’s invention cannot properly be rejected for obviousness.

Similar to claim 8 (Group 1), *Jackson* in view of one or more of AAPA or “Wrestling Mats” fails to teach or suggest the absorbent mat required by claim 1. *Sweeney*, as discussed above, is either non-analogous art, or cannot properly be combined with *Jackson* and AAPA in formulating an obviousness rejection.

*Jackson* in view of AAPA also fails to teach or disclose the printable area on the mat, as required in claim 1. The examiner contends that *Jackson* discloses a printable area on the mat for recording pugilist data at column 2, lines 3 – 5, which reads:

*It is another object of the present invention to provide customization of color, design, logo, symbol, letter(s) or word(s) imprinted on or about the surface of the invention.*

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No further description is provided within *Jackson* to supplement the intended customization. One must ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the art to make the proposed substitution, combination, or other modification. In re Linter, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972); MPEP 2143.01. Customization, as disclosed with respect to imprinting color, design, etc., surely leads one to believe that *Jackson* discloses the ability to provide customization prior to delivery to the customer. Thus, the brief discourse in *Jackson* is directly concerned with imprinting during manufacture. In direct contrast, appellant claims a printable area on the mat that can be written upon by the consumer after receipt or use, or signed by the boxer or printed with specific use or contest data. See appellant's disclosure at paragraphs [0011] and [0019].

With respect to any purported obviousness in further view of non-analogous *Sweeney*, this reference fails to bridge the gap between the claimed invention and the purported combination of AAPA and *Jackson*. As discussed above, AAPA and *Jackson* fail to teach the printable area. No indication as to the missing element can be found in non-analogous *Sweeney*, and thus the combination of the three references fails to teach or disclose all claim limitations, and a rejection for obviousness is improper in view thereof.

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By the examiner's own admissions in the office action, and by appellant's arguments presented above, it has been shown that *Jackson*, by itself, or in combination with one or more of AAPA, *Sweeney*, and "Wrestling Mats" fails to provide an adequate basis to reject claim 1. Additionally, the examiner has failed to assert a reasonable basis to show that there was a suggestion or motivation in the knowledge generally available to one of ordinary skill in the art to modify *Jackson*. It is respectfully submitted that there is no *prima facie* case of obviousness from the cited reference and the knowledge generally available to one of ordinary skill in the art, and that the claims are directed to a meritorious advance of the art, deserving of patentability. It is respectfully submitted that the rejection of claim 1 was improper and should be reversed.

#### 8.7 Group 5 Was Non-Obvious in View of the Prior Art

Claim 2 provides a pugilist corner mat further comprising indicia, and differs from Group 2 in that the apparatus further comprises a printable area, similar to claim 1. The combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, and "Wrestling Mats" fails to disclose all elements of claim 2, as the references fail to disclose an absorbent mat or a printable area, as discussed above with respect to Groups 1 and 4. Claim 2 properly depends from claim 1 (Group 4), and thus a rejection based upon obviousness is improper. Additionally, it would have been unobvious for one of ordinary skill in the art to combine the

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customizable indicia of non-antedating “Wrestling Mats” with the water-resistant mat disclosed in *Jackson* as appellant’s absorbent mat is not the competition surface, as discussed with respect to claim 9 above. It is respectfully submitted that the rejection of claim 2 was improper and should be reversed.

#### 8.8 Group 6 is Non-Obvious in view of the prior art

Claim 3 provides a pugilist corner mat further comprising indicia located on the apron area of the mat, and differs from Group 3 in that the apparatus further comprises a printable area, similar to claim 1. The combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, and “Wrestling Mats” fails to disclose all elements of claim 3, as the references fail to disclose an absorbent mat or a printable area, as discussed above with respect to Groups 1 and 4. Claim 3 properly depends from claim 1 (Group 4) and claim 2 (Group 5), and thus a rejection based upon obviousness is improper. Additionally, it would have been unobvious for one of ordinary skill in the art to combine the customizable indicia of “Wrestling Mats” with the water-resistant mat disclosed in *Jackson* as appellant’s absorbent mat is not the competition surface, as discussed with respect to Group 2 above.

Claim 3 further comprises the element of indicia displayed on the apron area of the mat, similar to claim 10 (Group 3). *Jackson* indicates a desire to imprint indicia on or about the surface of the invention. Non-antedating “Wrestling Mats”

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discloses that customized indicia, school insignias, can be added to the competition surface during manufacture. Merely disclosing that it is possible to place indicia on an object does not teach or suggest placing the indicia on the apron area of the mat as claimed in claim 3 and depicted in Figure 2 and described in the specification at paragraph [0018]. As such, neither *Jackson* nor “Wrestling Mats” teaches or suggests the size or placement of the indicia on the apron area. Further, no indication of indicia located on the apron area can be found in either AAPA or non-analogous *Sweeney*. It is respectfully submitted that the rejection of claim 3 was improper and should be reversed.

#### 8.9 Group 7 Would Have Been Unobvious in View of the cited prior art

Claim 12 provides a method of using the pugilist corner mat, where different pugilist corner mats are used in successive rounds. The combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, or non-antedating “Wrestling Mats” fails to teach or suggest all limitations of claim 12, and therefore appellant’s invention cannot be rejected for obviousness. As discussed above, the prior art references fails to disclose all elements of claim 8. As claim 12 properly depends from claim 8 (Group 1), the claim is similarly nonobvious.

In addition, the mat disclosed by *Jackson* is designed to be continuously re-used during a pugilist competition and during training as the water is extracted from the surface. See *Jackson* at col. 2, lines 61 – 62. Claim 12 recites the use of

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an adequate supply of disposable mats during a boxing match, and that re-use of the mat is dependent upon the amount of fluid absorbed by the mat. (See Appellant's application, paragraphs [0021] and [0022]). *Sweeney* discloses a disposable mat, but as discussed above, *Sweeney* is non-analogous art, and the combination of *Sweeney* with *Jackson* is improper because the references teach away from the combination, the combination would change the principle of operation of the *Jackson* mat, the combination would render the prior art unsatisfactory for its intended purpose, and/or impermissible hindsight was used in formulating the combination. "Wrestling Mats" does not antedate the present application and also fails to disclose the use of new mats during successive rounds. Indeed, the "Wrestling Mats" mats are more or less permanent boxing ring floors intended for the entire event. It is respectfully submitted that the rejection of claim 12 was improper and should be reversed.

#### 8.10 Group 8 is Unobvious in view of the cited prior art

Claim 13 and 14 provide a method of using the pugilist corner mat, where the method further comprises the step of recording pugilist data on the mat. The purported combination of *Jackson* and one or more of AAPA, non-analogous *Sweeney*, or non-antedating "Wrestling Mats" fails to teach or suggest all claim limitations, and therefore appellant's invention cannot be rejected for obviousness. As discussed above, the prior art references fail to disclose all elements of claims

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13 and 14, and as these claims properly depend from claim 8 (Group 1), they are similarly nonobvious.

In addition, appellant respectfully traverses the assertion that the alleged disclosure of customizable logos / indicia in *Jackson* or in non-antedating "Wrestling Mats" even remotely suggests the recording of contest data on a printable area of such a mat. As mentioned above, the brief discourse in *Jackson* is directly concerned with imprinting during manufacture. In direct contrast, appellant provides a printable area on the mat that can be written upon by the consumer after receipt or use, or signed by the boxer or printed with specific use or contest data. See appellant's disclosure at paragraphs [0011] and [0019]. And, the website advertisement is also directly concerned with the imprinting of school indicia during manufacture, and not the provision of an area on the mat that can be written upon by the consumer after receipt or use, or signed by the boxer or printed with specific use or contest data. The combination of "Wrestling Mats" and *Jackson* fails to teach or suggest the recording of data on the printable area feature as claimed, and it fails to provide any motivation or guidance for any such modification.

Furthermore, the method of claims 13 and 14 results in an indexed mat that potentially contains biological specimens from a particular round. This creates a memento of the event, or sports memorabilia, a significant result (see the

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specification at paragraph [0022]) which is not suggested in any reference cited in the rejection. The absorbent mat in *Sweeney* is disposable (column 3, lines 54 – 56); the mat in *Jackson* is to be used repeatedly, during the event and during training (column 2, lines 61 – 62) so that the fluids would all be commingled in a common collection system. The prior art must also teach or suggest the results of appellant's invention; disclosed inherent properties are part of "as a whole" inquiry for when determining whether the invention as a whole would have been obvious under 35 U.S.C. 103, one must also look to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification. In re Antonie, 559 F.2d 618, 620, 195 USPQ 6, 8 (CCPA 1977). Creating sports memorabilia is an inherent property that must be considered, and indicates non-obviousness in this instance as neither *Jackson* nor *Sweeney* teach the creation of memorabilia. Additionally, the totality of the prior art must be considered, and proceeding contrary to accepted wisdom in the art is evidence of non-obviousness. In re Hedges, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986). The wisdom of the prior art indicates repeated use or disposal whereas appellant provides a method to produce memorabilia, which is neither a repeated use nor disposal, and is contrary to both *Sweeney* and *Jackson*.

By the examiner's own admissions in the office action, and by appellant's arguments presented above, it has been shown that *Jackson*, by itself, or in

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combination with one or more of AAPA, non-analogous *Sweeney*, and non-antedating "Wrestling Mats" fails to provide an adequate basis to reject claims 13 and 14. Additionally, the examiner failed to assert a reasonable basis to show that there was a suggestion or motivation in the knowledge generally available to one of ordinary skill in the art to modify *Jackson*. It is respectfully submitted that there is no *prima facie* case of obviousness from the cited reference and the knowledge generally available to one of ordinary skill in the art, and that the claims are directed to a meritorious advance of the art, deserving of patentability. It is respectfully submitted that the rejection of claims 13 and 14 was improper and should be reversed.

8.11 Group 9: The Objection to Claims 19 – 24 is Improper and/or Claims 19 – 24 were Non-Obvious in View of the Prior Art

Claims 19 – 24 provide a pugilist corner mat with outer absorbent layers and an inner impervious layer. The appeal of Group 9 is provisional because the examiner has not indicated in the Office Action that these claims are allowable. The objection noted on the cover sheet does not appear to be applicable to claims 19 – 24 inasmuch as claim 19 is an independent claim and claims 20 – 24 depend from claim 19. As such, appellant is unsure whether the claims are rejected or are allowable. Appellant believes that the claims are allowable.

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If the claims of Group 9 are in actuality rejected, appellant contends that the rejection is improper as the combination of *Jackson* with one or more of AAPA, non-analogous *Sweeney*, or non-antedating "Wrestling Mats" fails to teach or suggest all claim limitations of claim 19, and therefore appellant's invention cannot properly be rejected for obviousness.

*Jackson*, AAPA, and "Wrestling Mats", as discussed above, fail to teach the use of an absorbent mat, and fail to teach indicia on the mat. Additionally, *Sweeney*, as discussed above, is either non-analogous art, or cannot properly be combined with *Jackson* and AAPA in formulating an obviousness rejection.

Should *Sweeney* be found to be properly combined, appellant further contends that *Sweeney* fails to teach the reversible mat of claim 19. *Sweeney* discloses a three-ply mat having an upper and a middle absorbent layer and a lower water-impervious layer (column 3, lines 38 – 49). In direct contrast, appellant provides a three-ply mat having upper and lower absorbent layers and a middle water-impervious layer. Additionally, no indication to modify the three-ply mat in *Sweeney* to form appellant's three-ply mat can be found in any of the references cited. It is respectfully submitted that any rejection of claims 19 – 24 was improper and should be reversed.

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8.12 Group 10: The Objection to Claims 7 and 18 is Improper and/or Claims 7 and 18 were Non-Obvious in View of the Prior Art

Appellant provisionally appeals the objection to claims 7 and 18. The appeal is provisional because the examiner has not indicated in the office action that these claims are allowable or not.

Claims 7 and 18 provide a pugilist corner mat and a method of use thereof, wherein similar to claim 19 (Group 9), the mat has outer absorbent layers and an inner impervious layer. It is presumed that claims 7 and 18 were objected to as dependent from a rejected base claim, although no indication of such was provided in the Office Action. Should claims 7 and 18 in actuality not be indicated as allowable in the latest office action, by the arguments presented above with respect to claims 1, 8, and 19 (Groups 1, 4, and 9), appellant contends that claims 7 and 18 are similarly non-obvious.

**9. CONCLUSION**

It is respectfully submitted that there is no *prima facie* case of obviousness from the cited references and that the claims are directed to a meritorious advance of the art, deserving of patentability. It is respectfully submitted that the rejection of claims 1 – 3, 5 – 6, 8 – 14, and 16 – 17 was improper and should be reversed. Furthermore, any rejection or objection to claims 7 and 18-24 was improper and should likewise be reversed.

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Respectfully submitted,



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## 10. APPENDIX

A clean copy of the claims involved in the appeal is as follows:

1. (Rejected): A boxing ring configuration useful for administering to pugilists between rounds essentially free of fluid deposition upon a floor of the boxing ring, comprising:
  - a boxing ring having posts rising upwardly from the floor at corners thereof;
  - opposing corners designated as pugilist corners;
  - an absorbent mat removably disposed in a pugilist corner adjacent to a respective post so as to overlie a portion of the floor at the corner;
  - a printable area on the mat for recording pugilist data; and
  - a seat for a pugilist placed on a central area of the mat so as to leave an apron area of the mat disposed outwardly of the central area for catching fluids from administering to the pugilist when seated on the seat, whereby the mat is secured in place against the floor by the weight of the pugilist on the seat.
2. (Rejected): The boxing ring configuration of claim 1, further comprising an indicia displayed on an obverse side of the mat.
3. (Rejected): The boxing ring of claim 2, wherein the indicia is displayed on the apron area.
4. (Cancelled):
5. (Rejected): The boxing ring configuration of claim 1, further comprising:
  - a cutout for the post formed in a corner of the mat; and
  - first and second edges of the mat extending from the cutout substantially at a right angle for alignment with respective edges of the floor.

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6. (Rejected): The boxing ring configuration of claim 5, further comprising an arcuate edge of the mat extending between ends of the first and second edges of the mat opposite the cutout.
7. (Objected to): The boxing ring configuration of claim 1, wherein the mat comprises an upper absorbent layer and a lower absorbent layer on either side of an impervious layer.
8. (Rejected): A method for conducting a contest between pugilists in a boxing ring comprising a floor, posts extending upwardly from the floor at corner areas thereof, and ropes strung from the posts adjacent to a perimeter of the floor, comprising the sequential steps of:
  - (a) commencing a round of the contest between the pugilists in the boxing ring;
  - (b) terminating the round and commencing a rest period;
  - (c) placing a flat, absorbent mat in a rest corner assigned to a respective pugilist;
  - (d) placing a seat for the pugilist upon the mat so as to leave an apron area around at least one side of the seat;
  - (e) seating the pugilist on the seat;
  - (f) administering to the pugilist during the rest period and catching excess fluids on the mat, thereby inhibiting fluid accumulation on the floor;
  - (g) removing the seat and mat from the boxing ring in preparation for another round;
  - (h) optionally repeating steps (a) through (g) a plurality of times.
9. (Rejected): The method of claim 8 wherein step (c) comprises displaying an indicia on an obverse side of the mat.

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10. (Rejected): The method of claim 9 wherein the indicia is disposed in the apron area.
11. (Rejected): The method of claim 8 wherein the same mat is used in successive steps (c).
12. (Rejected): The method of claim 8 wherein a new mat is used in successive steps (c).
13. (Rejected): The method of claim 8, further comprising the step of recording contest data on the mat.
14. (Rejected): The method of claim 13 wherein the contest data include a signature of the pugilist.
15. (Cancelled):
16. (Rejected): The method of claim 8 wherein step (c) comprises:
  - positioning a cutout formed in a corner of the mat adjacent to a post; and
  - aligning first and second edges extending from the cutout of the mat with respective edges of the floor.
17. (Rejected): The method of claim 16 wherein the mat includes an arcuate edge extending between ends of the first and second edges of the mat opposite the cutout.
18. (Objected to): The method of claim 16 wherein the mat comprises an upper absorbent layer and a lower absorbent layer on either side of an impervious layer.
19. (Objected to): A lay-flat mat for use under the seat of a pugilist being administered to during a rest period between rounds of a boxing match, comprising:
  - an upper absorbent layer with an obverse surface;
  - a lower absorbent layer with a reverse surface;
  - an intermediate impervious layer;

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a cutout at a corner for receiving a post at a corner of a boxing ring;  
first and second edges at a right angle and extending away from the cutout for alignment with respective edges of a floor of the boxing ring;  
a third edge opposite the cutout and extending from respective ends of the first and second edges;  
a central region of the obverse surface adjacent the cutout for receiving a seat for the pugilist;  
an apron area between the third edge and the central region; and  
an indicia displayed on the obverse surface.

20. (Objected to): The mat of claim 19 wherein the indicia is disposed in the apron area.
21. (Objected to): The mat of claim 19, further comprising a printable area in the central region for recording match data.
22. (Objected to): The mat of claim 21, further comprising match data recorded in the printable area.
23. (Objected to): The mat of claim 22 wherein the data include a pugilist signature.
24. (Objected to): The mat of claim 23 wherein the upper layer is stained with body fluid from the pugilist.

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## 12. Attachments

Please find attached appellant's retrieval of the website referenced by the examiner. Although the picture was inaccessible (page 2), the title listed on page 1 "Wrestler's World – 2002-2003" clearly indicates that the catalog is for 2002 – 2003.

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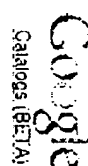
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